

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1144 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
DAYALJIBHAI VERSHIBHAI KARIA - Respondent

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Appearance :

MR IM PANDYA ADDL PP for Appellant:

MR TV SHAH for Respondent.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**Date : 20/06/2006****ORAL JUDGMENT**

1. **Leave granted. Appeal Admitted.** Mr. T.V. Shah, learned Advocate appears and waives service of admission on behalf of respondent/original accused. With the consent of learned advocate for the parties

this matter is taken up for final disposal.

2. Heard Shri I.M.Pandya, learned Addl.P.P. for the appellant-State of Gujarat and Shri T.V. Shah, learned advocate for the respondent. With the consent of learned advocates for the parties, appeal is heard forthwith.

3. The appellant - State of Gujarat has preferred the present appeal under Section 378 (1) (3) of the Code of Criminal Procedure, 1973 (herein after referred to as 'the Code' for short) against the order of acquittal dated 30.1.2003 passed by the learned Additional Chief Judicial Magistrate, Morbi in Criminal Case No. 33 of 1990, whereunder, the original accused/respondent was acquitted of the charges under Sections 2(1a)(a)(c)(m), 7(1) and 16(1a) of the Prevention of Food Adulteration Act, 1954 (herein after referred to as 'the Act' for short). The State has sought leave to prefer appeal as this being an appeal against the order of acquittal.

4. Brief facts deserves to be narrated as under :-

The original complainant - Food Inspector while discharging his duties at Morbi, had visited the shop of the respondent/ original accused on 31.7.1989 situated at Shakti Plot, Main Road, Morbi. The shop was named as "Ghanshyam Dairy Farm". In the said shop, the accused was selling the milk products. The original complainant after introducing himself as Food Inspector, purchased 650 grams of milk on payment of Rs.3.40ps. and obtained necessary receipt thereof. He has drawn the panchnama. The said milk was thereafter collected in three glass of bottles. The requisite notice under Form No. 6 was issued and signatures were obtained. The Food Inspector, thereafter, collected the food article in dry odourless glass bottles. The sample was collected in accordance with provisions of Prevention of Food Adulteration Rules, 1955 (herein after referred to as 'the Rules' for short) and it was divided into three parts and the requisite amount of preservatives

formalin was also dropped into it and the bottles were sealed in accordance with law. The labels required containing details of serial number of Local Health Authority, Food Inspector etc., were also pasted on the sample bottles and one part of the sample was sent to the Public Analyst and remaining two parts were sent to the Local Health Authority. The following documents have been exhibited :-

- (1) Ex.36, Notification of Gazette.
- (2) Ex.37, Form No. 6.
- (3) Ex.38, receipt for purchase of milk from the accused by the complainant.
- (4) Ex.39, Patrak showing the ownership of the firm.
- (5) Ex.40, panchnama.
- (6) Ex. 41, copy of memorandum of Form No.7.
- (7) Ex.42, letter written by the complainant to the Public Analyst.
- (8) Ex.43, letter dated 1.8.1989 addressed by the complainant to L.H.A.

(9) Ex.44, acknowledgment receipt.

(10) Ex.45, letter dated 9.8.1989 written by P.A. To the complainant.

(11) Ex.46, letter dated 5.9.1989 written by Local Health Authority, Rajkot to the complainant.

(12) Ex.47, report of the Public Analyst.

(13) Ex.48, details of sample.

(14) Ex.49, letter written by the complainant to L.H.A. for according sanction.

(15) Ex.50, list of documentary evidence produced by complainant to L.H.A.

(16) Ex.51, order of the L.H.A. to lodge prosecution against the accused.

(17) Ex.52, letter dated 1.12.1989 written by the L.H.A. to the complainant.

(18) Ex.53, letter dated 11.1.1990 addressed by the complainant to the Assistant Commissioner.

(19) Ex.54, letter dated 12.1.1990 addressed by Local Health Authority to the accused.

(20) Ex.55, Registered A.D. Slip of Ex.54.

(21) Ex.56, letter dated 9.1.1990 of the Local

Health Authority.

The report of the Public Analyst indicated that the sample food article was adulterated and it was not in conformity with the standards prescribed under the Act and Rules. The Local Health Authority after going through the papers, issued necessary sanction for lodging the prosecution and complaint came to be filed. The Local Health Authority issued requisite notice under Section 13(2) of the Act to the accused intimating him that he has a right to have sample food article further examined by the Central Food Laboratory. The trial Court after completion of the trial, came to the conclusion that the prosecution has failed in establishing the guilt on the part of the accused and therefore, the order of acquittal was recorded acquitting the accused of the charges on 30.1.2003 in Criminal Case No. 33 of 1990. This order is impugned in the present appeal by the appellant - State of Gujarat.

5. Shri Pandya, learned Addl.P.P. has taken this

court through the memo of Appeal, relevant documents accompanying the appeal and also the relevant records of Criminal Case No. 33 of 1990. Shri Pandya has submitted that the judgment and order of acquittal is erroneously passed and therefore, the same deserves to be quashed and set aside and the leave to appeal deserves to be admitted. Shri Pandya has submitted that the trial Court ought not to have acquitted the accused as there was a complete compliance of the mandatory provisions of the Rules and Act in collecting and sealing the samples. Shri Pandya has submitted that deposition of the Food Inspector before the trial Court contains statement to the effect that glass bottles used for collecting the samples were dry, odourless and clean. Shri Pandya has submitted that the question put to the Food Inspector in his cross-examination, whether he himself had cleaned the bottles or whether the bottles were cleaned at the place of vendor and in answer thereto, he has deposed that he had not cleaned the bottles nor the bottles were cleaned at the place of the vendor is

of no avail to the accused and therefore, the learned trial Judge has erroneously proceeded on the ground that the Food Inspector had not complied with the mandatory provision of Rule 14 of the Rules while collecting the sample. Shri Pandya has also submitted that mere statement in the testimony of the Food Inspector that the bottles were cleaned should be considered as sufficient compliance with Rule 14 of the Rules and therefore, the judgment which has been based on this footing is required to be quashed and set aside. Shri Pandya has submitted that it is established principle of law that the deposition of Food Inspector about cleaning of bottles should be sufficient to bring home the guilt and it need not necessarily be one corroborated by other evidence. Shri Pandya has submitted that the trial Court has erroneously held that the food sample was required to be made homogeneous before the same is collected. The trial Court has ought to have appreciated the fact that the Food Inspector had complied with the mandatory provisions of law and therefore, the erroneous

finding of the trial Court which has resulted into acquittal of the accused, deserves to be quashed and set aside. Shri Pandya has submitted that in view of these, the findings and judgment of the trial Court deserves to be quashed and set aside.

6. Shri T.V. Shah, learned counsel appearing for the respondent - original accused has submitted that leave deserves to be refused and appeal deserves to be rejected as it can be established beyond doubt that there was blatant non-compliance with mandatory provisions of Rule 14 of the Rules and the entire appeal can be disposed of on the respondent's demonstration before this Court that there is absolute failure on the part of the prosecution in proving the positive compliance with the provisions of Rule 14 of the Rules. Once, it is established that the prosecution has failed in proving the positive compliance of Rule 14 of the Rules, the entire case of the prosecution stands vitiated. Shri Shah has invited this court's attention to the part of deposition of the Food

Inspector (complainant), wherein, he has admitted unequivocally that the sample food milk was collected in bottles, which were obtained from the office. He has also admitted that he had no knowledge about the cleanliness of the bottles/container on the date of collection of the sample. He has also admitted that the bottles were not cleaned by helper. He also admits that the milk was collected with the help of measuring unit called "pali" in local parlance. This admission about cleanliness of the bottles/container would go to show that there was a doubt about absolute compliance of provisions of Rule 14 of the Rules. He submitted that, thus, the prosecution has failed to prove the due compliance with Rule 14 of the Rules and therefore, on this ground alone the present appeal is not required to be admitted and leave is required to be rejected. Shri Shah has further submitted that in the present case also, there is clear admission on the part of the complainant that bottles were not cleaned in his presence nor the prosecution has bother to lead any

cogent evidence about the cleanliness of the bottles and in view of this, the order of acquittal may not be interfered with and the appeal may not be admitted and the leave may kindly be refused.

7. This court has perused the papers pertaining to Criminal Case No. 33 of 1990. The panch has not supported the case of the prosecution. This Appeal deserves to be disposed of only on the ground that the prosecution has failed in establishing beyond doubt the absolute compliance of provisions of Rule 14 of the Rules. In the deposition of the Food Inspector, the Food Inspector has clearly admitted that the bottles were obtained from the office and he had no personal knowledge about that being cleaned. He has also admitted that neither he nor his helper has not cleaned the bottles at the place of vendor. The deposition of the complainant itself is sufficient to go to show that the complainant was not sure of the status of the bottles, wherein, the sample was collected. Mere statement that clean bottles were used would not be sufficient to show

that bottles were cleaned.

8. In view of the aforesaid discussion, it is established that the prosecution has failed in proving the due compliance with Rule 14 of the Rules, which is time and again said to be mandatory. The duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the Court by leading evidence that the bottles used were clean and dry. This court in case of **State of Gujarat Vs. Bhupendra M. Mehta (supra)**, reported in 1999 (1) GLH p.227, which reads as under :-

"para 9 : Mr. Vora submitted that a specific question was put about the cleaning of the bottles, but there is no answer by the witness and what is stated is that the bottles were lying in his custody for eight days. Therefore, the bottles were cleaned or not, is not established by the prosecution. He further submitted that the Food Inspector has not

stated that he himself has cleaned it or under his supervision, the bottles were cleaned and thereafter, the bottles were properly kept. It is required to be noted that the duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the Court by leading evidence at the Trial Court that the bottles used were clean and dry. In case of **M.B. Risaldar Vs. Radheshyam** reported in 21 (2) GLR 136, this Court has observed as under :

"Even I feel that when a witness testified to the effect that the glass bottles were cleaned and dried, a mere visual appearance to the naked eye may not be sufficient sometimes. If no question might have been put to him as to how he can say that the glass bottles were cleaned and dried, probably the matter would have ended there. But he has given out that the peon had cleaned and dried the bottles and put them into the cupboard. In this state of the evidence, it was the duty of the prosecution to examine that peon to

show that bottles were properly cleaned and dried and they were put into the cupboard and properly closed."

9.1 In that instant case, if in the evidence the words would have been to the effect that the bottles were cleaned before eight days, and were kept in the cupboard, the Court would not have any hesitation in accepting the same, but as the sentence is not correctly written, it is difficult to say whether it refers to 'purchasing' or 'cleaning' of the bottles. Therefore also, the benefit should go to the accused.

In the result, the appeal is dismissed."

9. This Court in case of **State of Gujarat Vs. Mahmadbhai Ismailbhai Vora**, reported in 2005(1) FAC p.60 has held that if there is a clear violation of Rule 14, then, the case of the prosecution stands vitiated and the order of acquittal need not be interfered with. In the decision of the Bombay High Court in case of State of **Maharashtra Vs. Vinayak Mahadeorao Waze and another**, reported in 2005 Cri. L.J. p.2100, it was held that when bottles in which the

samples were collected were not cleaned and dried in presence of accused and panch witness, there was non-compliance of Rule 14 of the Rules. Here in the present case also, there is clear admission on the part of the complainant that bottles were not cleaned in his presence nor the prosecution has bother to lead any cogent evidence about the cleanliness of the bottles.

10. This being an acquittal appeal, the Court would ordinarily be slow in interfering with the order of acquittal, unless and until it is established by the appellant that the order impugned is being so perverse and illegal, which has resulted into miscarriage of justice and in absence of such plea and demonstration from the appellant, this court is not inclined to interfere with the order of acquittal.

11. In view of this, this court has no hesitation in observing that the prosecution had failed before the trial Court in establishing the due compliance with Rule 14 of the Rules. This court is not inclined to interfere with the order of acquittal. In the

result, this appeal fails and it deserves to be dismissed and is accordingly dismissed.

(S.R.BRAHMBHATT, J.)

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